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ALEXANDER L. STEVAS,
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81 -2319

NO. 81-

In the Supreme Court of the United States

OCTOBER TERM 1981

James L. Pickering, Petitioner Pro Se,

vs.

Environmental Protection Agency of the United States
and
Department of Environmental Conservation
of the State of New York, Respondents.

AN ORIGINAL PETITION UNDER ARTICLE III SECTION 2, PAR. 2 FOR A WRIT OF MANDAMUS, ACTION FOR EXEMPLARY DAMAGESAND INJUNCTION TO, WITH AN ACTION FOR EXEMPLARY DAMAGES AND COSTS, TO THE ENVIRONMENTAL PROTECTION AGENCY OF THE UNITED STATES AND DEPARTMENT OF ENVIRONMENTAL CONSERVATION OF THE STATE OF NEW YORK.

James L. Pickering
Petitioner Pro Se
Hand Road
Chaffee, New York 14030

QUESTION PRESENTED

Is it a fact that the petitioner, a citizen of the United States, was denied a right of citizenship under Ammendment IX, Constitution of the United States, and equal protection of the laws by the issuance of Construction Permit No. 2183, on 28 July, 1981 by the Department of Environmental Conservation of the State of New York without holding the public hearings required by Title 40, Part 25 (FRL1041-1) as Published in the Federal Register Vol. 44, No. 34 Page 10286 et seq. on Friday, Feb. 16, 1979.

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James L. Pickering, Petitioner Pro Se

vs.

Environmental Protection Agency
of the United States

and

Department of Environmental Conservation
of the State of New York, Respondents

Petition for a writ of mandamus and injunction to the Environmental Protection Agency of the United States and Department of Environmental Conservation of the State of New York and Action for Damages for mental anguish.

James L. Pickering, a citizen of the United States and of the State of New York and resident of the Town of Sardinia in Erie County living on Hand Road in the Hamlet of Chaffee, Election District 2, hereby petitions pro se by the authority of Art. I Ammendments to the Constitution of the United States the Supreme Court of the United States for a writ of Mandamus to the Environmental Protection Agency of the United States and the Department of Environmental Conservation to the State of New York ordering them and each of them to hold the public hearings required by Title 40 Chapter 1 (FRL1041-1) Part 25 as published in the Federal Register Vol. 44, No. 34, Pages 10286 through 10297 on Friday February 16, 1979, which respondents have not done prior to the issuance of Construction Permit No. 2813 by Department of Environmental Conservation of the State of New York under the hand of John Tygert P.E. of DEC region 9 thereby violating the right of public participation extended by the regulation and protected as a right of citizenship under Ammendment IX of the Constitution of the United States, from an action for exemplary damages and an injunction to stop construction under permit 2183.

OPINION BELOW

This being an original petition pro se there is no opinion below.

JURISDICTION

The Jurisdiction of this Court is invoked under Art. 1 Ammendments to Constitution of the United States and Art. III Section 2, Par. 2 of the Constitution of the United States

CONSTITUTIONAL PROVISION INVOLVED

The IX ammendment to the Constitution of the United States provides:

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Art VI. Sect. 3 of the Constitution of the United States provides:

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

Art. VI, Sect. 2 of the Constitution of the United States provides:

This Constitution, and the laws of the United States which shall be made in the persuance thereof; and all treaties made or which shall be made, under the Authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the Constitution or laws of any state to the contrary notwithstanding.

STATEMENT OF THE CASE

Petitioner Pro Se, James L. Pickering, a citizen of the United States and of the State of New York, residing on Hand Road in the Hamlet of Chaffee, New York, Election District 2 of the Town of Sardinia, Erie County on lands riparian to lands owned by Chaffee Landfill Incorporated, whose water is derived from a well pumping groundwater for drinking, cooking and bathing purposes upon information and belief supported by documents that the groundwater is contaminated and believing same source of contamination to be a SPRING FED POND filled with garbage on the lands owned by Chaffee Landfill was entitled to present his case at the public hearings required to be held in said election district 2 of the Town of Sardinia by Title 40, Chapter 1, Part 25 (FRL1041-1) as published in Federal Register Vol. 44, No. 34, Pages 10286 through 10297 on Friday 16 February 1979.

Department of Environmental Conservation of the State of New York an agency required by the regulations to hold the hearings as part of its Permit Program under the Resource Recovery and Conservation Act did not hold the hearings required to be held in the election District 2 of the Town of Sardinia.

On 28 July 1981 Permit No. 2183 was issued to Chaffee Landfill by Region 9 of Department of Environmental Conservation of the State of New York under the Hand of John Tygert P.E. thereby denying Petitioner, James L. Pickering, Pro Se his right of public participation as set forth in the afforementioned FRL1041-1) Title 40, Chapter 1, Part 25, which is protected as an unenumerated right by Ammendment IX of the Constitution of the United States.

An action for exemplary damages in excess of $10,000 is included for mental anguish involved because of unknown moment of toxification of those members of his household coming in contact with the polluted waters pumped from the groundwater supply, there being no other public water supply available.

REASONS FOR GRANTING THE WRIT

The citizen as a citizen is entitled under Ammendment IX to the same quality of groundwater for drinking purposes as all other citizens and equal relief in the public forums established to protect the quality of that groundwater. The issuance of Permit 2813 by Region 9 of DEC denies those rights protected by Ammendment IX of the Constitution of the United States.

To compel Department of Environmental Conservation of the State of New York to obey the Constitution of the United States.

To compel the Environmental Protection Agency of the United States to obey the laws of the United States as passed by the Congress.

To secure for the citizens of the United States those rights protected for them by the Constitution of the United States. To stop construction until the laws and regulations of the United States are fully complied with.

REASONS FOR DOCKETING THE ACTION

To provide a penalty and remedy to the citizen for the violation of his constitutional rights.

To secure for the Citizens of the United States the right of Trial by Jury in the district wherein the injury occurred.

CONCLUSION

So as to secure for the citizens of the United States those rights guaranteed by it to them, the Court should (1) Issue a writ of mandamus to Region 9 of New York State DEC compelling it to hold the hearings required by FRL1041-1 Chapter 1, Part 25 in the Election District 2 of the Town of Sardinia, and to rescind permit 2183. (2) Issue a writ of mandamus to EPA Region 2 to compell compliance specifically with the provisions to FRL1041-1 by all agencies under its jurisdiction. (3) Seat a jury of the people in election district 2 Town of Sardinia to try the issue of exemplary damages and mental anguish.

Respectfully submitted,

James L. Pickering
Petitioner Pro Se
Hand Road
Chaffee, New York 14030
(716) 496-5319

600 Delaware Avenue, Buffalo, New York 14202

July 2?, 1?81

Mr. Richard C. Penfold, President
Chaffee Landfill, Inc.
Hand Road
Chaffee, New York 14134

Re: Transmittal of Permit to Construct
Permit #2193 - Facility #15514
Chaffee Landfill, Inc.
Sardinia (T), Erie County

Dear Mr. Penfold:

Transmitted herewith is the Permit to Construct for the above facility. The permit contains a number of conditions all of which are important. Most specifically the requirements for quarterly reporting of groundwater quality, leachate production, and waste received in conditions 5, 8 and 9 should be submitted on the 15th day of January, April, July and October for the previous quarter.

In addition, condition 10 specifies that commencing August 3, 1981 a monthly deposit of $6,000 should be made on the first business day of each month to a joint escrow account to cover the costs of closure and maintenance thereafter. As indicated in this condition, this account will be reviewed annually and payments into the account will be adjusted to assure that an adequate amount of money is available for the proper closure, monitoring and maintenance after the landfill ceases operation. It should also be noted that the issuance of this permit does not relieve you of the responsibility of complying with local rules, regulations, ordinances or any other county, state or federal rules or regulations.

If you should have any questions, please do not hesitate to contact this office at 716/842-4077

Very truly yours,

John S. Tygert, P.E.
Senior Sanitary Engineer

JST:las

cc: Mr. J. Campbell, Erie County Department of Environment and Planning
Mr. E. Sarcomb, Division of Solid Waste, NYSDEC-Albany
Mr. J. Tarpoff, Regional Director, NYSDEC-Buffalo
Mr. W. [illegible], Supervisor - Town of Sardinia

APPENDIX B

2183

October 1, 1981

PERMIT

Under the Environmental Conservation Law: Article 27, Title 7, Part 360

☐ CONSTRUCTION ☐ OPERATION ☐ INITIAL ISSUE ☐ RENEWAL ☐ REISSUANCE ☐ MODIFICATION

PERMIT ISSUED TO	ADDRESS OF PERMITTEE	TELEPHONE NO.
Chaffee Landfill, Inc.	Wood Road, Chaffee, New York 14030	716/496-9818

LOCATION OF PROJECT			ENVIRONMENTAL PROTECTION AGENCY
Town Cardiola	County Erie	Region 9	600 Delaware Avenue, Buffalo, New York 14202

DESCRIPTION OF PROJECT	ENVIRONMENTAL REPRESENTATIVE
Construct a solid waste management facility	Richard Hirsch

GENERAL CONDITIONS

1. The permittee shall file in the office of the Environmental Conservation Region specified above, a notice as soon as possible in advance (not less than 5 days in advance of the date of commencement and shall also notify said office promptly in writing of the completion of the work.
2. The permitted work shall be subject to inspection by the authorized representative of the Department of Environmental Conservation who may order the work suspended if the public interest requires it.
3. As a condition of the issuance of this permit, the applicant does hereby assume responsibility for the operation of the project(s), the full legal responsibility for all damages, direct or indirect, of whatever nature, and by whomsoever suffered, arising out of the project described herein and has agreed to indemnify and save harmless the State from suits, actions, damages and costs of every name and description resulting from the said project.
4. All work carried out under this permit shall conform to the attached plans and specifications, any conditions noted in paragraph 17 of Environmental Conservation Law or rules and regulations of the Department of Environmental Conservation duly promulgated thereunder, unless otherwise specified in writing by the Department of Environmental Conservation prior to their application.
5. The permittee is responsible for obtaining any other permits, approvals, or easements which may be required for the project.
6. Upon issuance of this permit, the permittee acknowledges receipt of a copy of the Department's Program Policy on Solid Waste Management Facilities and agrees to comply with the terms and conditions set forth therein. Failure to post bond or security when required by the Program Policy may result in revocation of this permit.

SPECIAL CONDITIONS

1. Only household and commercial refuse can be accepted on site. Sludge and industrial refuse can be accepted as approved by this office. No other waste may be accepted.
2. An approvable final grading plan shall be submitted to this office on or before August 1, 1981.
3. The first stage of the leachate collection system must be constructed and operational on or before October 1, 1981. Gravel fodder lines must contain a minimum of 6" dia. [illegible] perforated pipe. The second stage of the system shall be [illegible] upon commencement of operations outside of the first stage area.
4. The additional deep monitoring well shall be located [illegible] site to the northeast corner [illegible] the observation [illegible] shall be [illegible] water in order to intercept [illegible] with wells must be placed outside the berm at a distance [illegible] wells not to be disturbed during construction of the berm.
5. All monitoring wells shall be sampled on a quarterly basis for the following: [illegible] volatiles, specific conductivity, total organic [illegible] TOC's and manganese. In addition, the water elevation [illegible] the elevation at which the sample was taken [illegible] of March, June, September and December and the [illegible] following month to the following agencies:

New York State Department of Environmental Conservation
Division of Solid Waste
50 Wolf Road, Albany, New York 12233

ISSUED BY	SIGNATURE	DATE

PERMITTEE'S COPY

Best Copy Available

Permit to Construct #2183
Facility #15514
Chaffee Landfill, Inc.
Hand Road, Chaffee, New York 14134

5. (cont'd)

New York State Department of Environmental Conservation
Bureau of Solid Waste Disposal
50 Wolf Road, Albany, New York 12233

Erie County Department of Environment and Planning
Rath Building - Room 1050
95 Franklin Street, Buffalo, New York 14202

In addition, on the annual second quarter sampling, the following parameters shall be analyzed and reported in addition to those listed above: cyanide, COD, sulfate, copper, arsenic, cadmium, chrome, lead, mercury, selenium, zinc and aluminum.

6. The landfill shall be operated in accordance with the engineering plans and reports as approved by this office during the life of this permit.

7. The clay berm to be constructed around the south and east sides of the site shall be finished on or before October 1, 1981.

8. Records shall be maintained on leachate production; quarterly reports shall be submitted on January 15, April 15, July 15 and October 15 detailing the amount of leachate produced and removed from the site for off-site treatment and disposal for the previous quarter.

9. Quarterly reports shall be submitted on January 15, April 15, July 15 and October 15 detailing the amount of waste received during the previous quarter.

10. Beginning August 3, 1981 a $6,000 deposit shall be made, and on the first business day of each month thereafter, an additional $6,000 deposit shall be entered into a joint escrow account approved by this Department with this Department being named as one of the beneficiaries. After a period of one year and annually thereafter, the escrow account will be reviewed and the monthly payment adjusted accordingly to insure sufficient funds to properly and completely close out and monitor and maintain the landfill.

If the leachate collection system is not constructed and fully operational on October 1, 1981, this Department will order the payment of the difference between the $72,000 closure cost and the existing escrow account.

11. The standpipes which monitor the area and bedding below the leachate collection wells will be inspected and recorded daily for the initial 30 days of operation. Subsequent inspections can be reduced once the integrity of the system has been established.

12. The variance request for exception from the 50 ft. separation distance (from property boundaries to the edge of the fill) is hereby approved. See attachment.

Date of Issuance July 28, 1981

Permit Administrator

NOTICE OF PERMIT

for:

[x] CONSTRUCTION	[x] INITIAL ISSUE	[ ] REISSUANCE
[ ] OPERATION	[ ] RENEWAL	[ ] MODIFICATION

has been issued to: CHAFFEE LANDFILL, INC.

Address: Hanc Road, Chaffee, New York 14124

for a project described as: Construct a solid waste management facility - Facility #15514

under the Environmental Conservation Law,
Article 27, Title 5, Part 360 (Solid Waste Management Facilities)

NOTE:
- This Notice of Permit must be posted on the project site in such a manner that it is protected from weather and is in a location readily visible to the public.
- A copy of the Permit with the general and special conditions noted thereon will be shown to anyone upon request.

New York State
Department of Environmental Conservation

John S. Tygert, P.E. John S. Tygert, P.E.
Issuing Officer

NYSDEC, 600 Delaware Avenue, Buffalo, New York 14202
Address

2:83	July 28, 1981	October 1, 1981
Permit No.	Issue Date	Expiration Date

APPENDIX C

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IN THE

Supreme Court of the United States

October Term, 1981

JAMES L. PICKERING,
Petitioner Pro Se,

v.

ENVIRONMENTAL PROTECTION AGENCY OF THE UNITED STATES and DEPARTMENT OF ENVIRONMENTAL CONSERVATION OF THE STATE OF NEW YORK,
Respondents.

ON PETITION FOR ORIGINAL WRIT OF MANDAMUS TO THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AND NEW YORK DEPARTMENT OF ENVIRONMENTAL CONSERVATION

RESPONDENT'S BRIEF IN OPPOSITION

ROBERT ABRAMS
Attorney General of the State of New York, Attorney for State Respondent
State Capitol
Albany, NY 12224
(518) 474-4819

PETER H. SCHIFF
Acting Attorney in Chief
Appeals and Opinions

DAVID WOOLEY
Assistant Attorney General
Of Counsel

Question Presented.

Whether the United States Supreme Court has original jurisdiction to issue a writ of mandamus against State and Federal administrative officers in circumstances that are not in aid of the Court's appellate jurisdiction.

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TABLE OF AUTHORITIES.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981.

No. 81-2319.

JAMES L. PICKERING,

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ENVIRONMENTAL PROTECTION AGENCY OF THE UNITED STATES and DEPARTMENT OF ENVIRONMENTAL CONSERVATION OF THE STATE OF NEW YORK,

Respondents.

ON PETITION FOR ORIGINAL WRIT OF MANDAMUS TO THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AND NEW YORK DEPARTMENT OF ENVIRONMENTAL CONSERVATION

RESPONDENT'S BRIEF IN OPPOSITION.

The respondent Department of Environmental Conservation of the State of New York respectfully requests that this Court deny the petition for writ of mandamus seeking orders against administrative officers of the State of New York.

Constitutional and Statutory Provisions Involved.

1. United States Constitution Article III Section 2, Clause 2. *Supreme Court, Original and Appellate Jurisdiction:*

> In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the Supreme Court shall have original jurisdiction. In all the other Cases before mentioned, the Supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

2. 28 U.S.C. §1361:

> *Action to compel an officer of the United States to perform his duty*
>
> The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereto to perform a duty owed to the plaintiff.

Statement of the Case.

This controversy arose from an administrative decision of the New York Department of Environmental Conservation. The decision granted a permit to a private company to operate a landfill near the petitioner's home in Chaffee, New York. The petitioner alleges that his rights were violated because the respondent did not hold a public hearing prior to the issuance of the permit.

Petitioner seeks an original writ of mandamus against non-judicial officers of the federal and New York State government. There has been no prior decision of any federal or state court regarding the petitioner's claim. The petitioner has not filed for a writ of mandamus in the U.S. District Court pursuant to 28 U.S.C. 1361. The petitioner has not filed a citizen suit in the U.S. District Court pursuant to 42 U.S.C.A. §6972. The petitioner has not instituted a proceeding to review the administrative determination of the New York respondent decision in state court pursuant to New York Civil Practice Law and Rules, Article 78 (McKinney).

REASON WHY THE WRIT SHOULD BE DENIED.

The Court does not have original jurisdiction to issue a writ of mandamus except in aid of its appellate jurisdiction.

It is well established that the U.S. Supreme Court does not have original jurisdiction to issue a writ of mandamus except in aid of its appellate jurisdiction. *Ex parte Republic of Peru,* 318 U.S. 578, 87 L. Ed. 1014, 63 S. Ct. 793 (1943); *Ex parte Yerger,* 8 Wall 85, 19 L. Ed. 332, 336 (1869); *Kendall v. U.S.,* 12 Pet. 524, 9 L. Ed. 1181 (1838). The issuance of a writ of mandamus to a non-judicial officer is not in aid of appellate jurisdiction and is prohibited as an exercise of original jurisdiction. *Marbury v. Madison,* 1 Cranch 137, 2 L. Ed. 60 (1803).

Conclusion.

For this reason, the petition for a writ of mandamus should be denied.

Respectfully submitted,

ROBERT ABRAMS
Attorney General of the
State of New York
Attorney for State Respondent
State Capitol
Albany, NY 12224
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PETER H. SCHIFF
Acting Attorney in Chief
Appeals and Opinions
DAVID R. WOOLEY
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